THE TREND OF THE JUVENILE COURT

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Workers and thinkers in the field of the juvenile court have, consciously or unconsciously, divided in theory and in practice during recent years. By contrasting sharply their differing views, and by noting the various courts with these contrasts in mind, the writer purposes to bring out certain conclusions as to the present trend of the juvenile court as an institution. An analysis of the functions performed at present by juvenile courts will show to what extent the differences in their policies are reconcilable.

One group of workers tends to expand the court's work to include many different services as the need arises or the budget allows.

Another group wishes to limit the court's functions, or to transfer them entirely to other agencies. There are two conspicuous lines of thought in this second group, each equally plausible, which at first sight, however, seemed to the writer mutually exclusive. On the one hand, there is the statement that the functions of the juvenile court should be taken over by the school system. On the other hand is the argument that they could better be performed by fusion with a domestic relations court, handling the whole family unit.

I

Before passing judgment on these groups, let us review the courts themselves for facts which seem to point in one or another direction.

In the courts of the following cities have been developed one or more specialized lines of social work in connection with probation: Washington, D. C.; Richmond and Brooklyn, N. Y.; Newark and Elizabeth, N. J.; Pittsburgh, Pa.; Cleveland, Columbus, Toledo, and Cincinnati, Ohio; Louisville, Ky.; Indianapolis, Ind.; Kansas City, Mo.; Denver, Colo.; Salt Lake City, Utah; Los Angeles and San Francisco, Cal.; Portland, Ore.; Seattle, Wash.; Vancouver, Winnipeg, and Toronto, Can.; Chicago, Ill.; Minneapolis and St. Paul, Minn.; Des Moines, Iowa.

The list of activities differentiated from or grafted on to the probation department includes placing-out and employment agencies, clinics, educational classes, recreational groups and camps, relief measures and pensions. I have included above those courts which are so closely allied with some organization performing these functions as to make the two a single institution for all practical purposes; such as the Juvenile Probation Association of Brooklyn or the "Auxiliary" of the San Francisco court. Many probation offices not included here constantly perform some of these services for their charges, but have not developed special facilities for handling any one kind of need.

Juvenile courts in many places, chiefly in the middle west, have features partaking in some way of the nature of domestic relations courts. The New Jersey, Ohio, Philadelphia, Indianapolis, Michigan and Utah courts are in this group. In other places opinions are openly advocated which point in a similar direction. Among these are Pittsburgh, Louisville, St. Louis,[1] Grand Rapids,[2] and Chicago.[3] Contributory delinquency and dependency laws, the jurisdiction of which is now almost everywhere placed in the juvenile court, also point toward the intimate connection between juvenile and domestic relations courts.

Of the attempt to transfer or force back different phases of probation work upon other agencies there are examples, not always deliberate or clear-cut, in Boston, Springfield (Mass.), Newark, Baltimore, Indianapolis, St. Louis, Denver, Oakland (Cal.), Seattle, Minneapolis, Chicago, and Grand Rapids. The report of the Hotchkiss committee on the juvenile court of Chicago (1911–1912) contains perhaps the best statement of the thesis that the juvenile court is an educational institution.[4] The proposals of the so-called Levy bill in New York, and of Mr. Willis Brown, formerly of Salt Lake City and Gary, Ind., for transplanting the juvenile court bodily to the school system, are not by any means carefully or consistently worked out, but they are significant indications of a tendency in this direction.

[1] Report, 1912–1913.

[2] Report, 1912.

[3] *The Survey*, May 11, 1912; *The Criminal Law and Criminal*, September, 1912.

[4] See also paper by Prof. W. E. Hotchkiss, in *Proceedings of National Conference of Charities and Corrections*, Cleveland, 1912.

It will be noted that I have not attempted to align the courts into three distinct groups. Several present apparently conflicting evidence. As a matter of fact, few of them have any theory at all about what they undertake. Some frankly claim that local circumstances must control their policy exclusively.

As typical of the first group, however, might be mentioned the juvenile court of Salt Lake City. From them comes the following:

> We are convinced, through experience, that juvenile court work naturally divides itself into separate and distinct departments as follows: (1) The apprehending department; (2) the investigating or segregating department; (3) the judicial department; and (4) the probation department.
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> Each department has its own particular duties to perform and is supervised by a head of the department, with all departments, with the exception of the judicial, being under the general supervision of the chief probation officer. . . . . In our judgment, the investigating department is a most important one and should be so equipped as to enable it to make a thorough investigation of the physical and mental conditions of the child, also the home environment, the neighborhood environment, the school conditions, ... About three-fourths of the young offenders brought into our court are settled by the investigating department and one-fourth go before the judge. . . . .
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> In my visit to the convention of charities and correction at Cleveland, Ohio, last June, I was very greatly surprised to find a great majority of juvenile court workers contending that the apprehending of minors does not belong to juvenile court work. It seems to me that such a view is absolutely wrong and tends to narrow instead of broadening our field of action. I sincerely trust that public opinion will not favor such a contention.

As examples in the second group I shall cite the New Jersey and St. Louis courts; the former leaning toward fusion with the domestic relations court, the latter a clear-cut instance of the transfer of former court work to other agencies, notably the school system, to their mutual advantage.

The New Jersey law (ch. 360, laws of 1912, p. 630) reads:

> 1. In all counties of this state where there is or may hereafter be established a county juvenile court, said court is hereby vested with jurisdiction to hear and determine all disputes involving the domestic relation, the jurisdiction over which is now or may hereafter be by law vested in any court of this state except the court of chancery and the orphans' court.
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> 2. By disputes involving the domestic relation is meant all complaints for violation of an act entitled "An act concerning disorderly persons" (Revision of 1898). . . . . where the gravamen of the complaint is the failure or neglect of one member of a family to satisfy or discharge his legal obligations to another member or members of the family, and all charges against any per-

sons for abandonment and non-support of wives, or children, or poor relatives . . . . *provided, however,* that nothing in this act shall be construed to confer upon such court jurisdiction to hear and determine any criminal complaint . . . . except as provided by law.

3. The jurisdictions of courts now authorized by law to hear and determine any of the matters herein referred to shall not be curtailed or affected . . . . but the county juvenile court shall have jurisdiction in such cases concurrent with such courts; *provided, however,* that any such cause pending in any other court, excepting the court of chancery or the orphans' court, may be transferred to the county juvenile court by the order of the judge of such court having first obtained jurisdiction, or said cause may be transferred to the county juvenile court upon the application of any party complainant or defendant provided such application is approved by the judge of the county juvenile court. . . . .

4. . . . . process may be served in the same manner as provided for the service of process in other cases in which the juvenile court has jurisdiction.

. . . . Approved April 2, 1912.

The following from St. Louis are the best statements of the "forcing back" policy, by the only probation office which has followed it consciously and consistently:

. . . . I am today filing a petition handed me . . . . in the case of R——— N———. In doing so and in defense of my position in this particular case, I want to take the opportunity of explaining what I feel ought to be the coöperation between the public school system and the juvenile court.

I think you will grant that truancy and incorrigible school conduct are a problem for the educational authorities. If you grant that, you will also grant that a child, in appearing before the court for such causes, is a confession of failure on the part of the school system. This failure may be due to causes for which the board of education can enforce no remedy. It will then become necessary to call on the court of law to put through a plan which may have been laid down by the attendance officer, principal, or teacher. It is not fair to the judge to bring before the court a truant and present at the same time only the fact of truancy. A report ought to be made, preferably written, or presented verbally, presenting a social diagnosis and prescribing a remedy. If the trouble be environmental the boy may be forced by court order to live with relatives who could give him a better home. If it be a "gang" problem the family might be forced to move. If both of these remedies have been applied and have failed, an institution may be needed. If such a report is made there is no reason why the attendance officer should not appear before the court in exactly the same light as a probation officer, and his recommendation received in the same way. At least such recommendations will prevent the child's being placed on probation, as was intended in R——— N———'s case. You will certainly agree with me that that is a useless disposition. The court ought to act on the theory that any delin-

quent care received from the attendance officer should have been given careful thought and effort from a social service viewpoint. You certainly will grant that there is no inherent power in a probation officer as such which makes him better to handle a case than an attendance officer. Such a disposition will only mean a duplication of effort and I believe a shifting of responsibility.

Again,

We are getting away, I think, from the individual case, and we are realizing more and more that to be efficient the juvenile court must simply be an eye for the community, through which to see the social diseases as they affect children.

The object of the juvenile court which understands its mission in a community is, not to punish the children which come under its jurisdiction, but to point out the weak spots in the community to the agents for social uplift, to the end that these districts can be reached before it becomes necessary to bring the children into correctional institutions.

II

Confusion would result if one were to try to guess the trend by merely counting courts. Conclusions must be based upon the relative effectiveness of different policies, and upon a careful study of the functions performed by juvenile courts.

The first juvenile courts, like many American penal reforms, were emergency measures, occurring at the point of greatest abuse. Children were being tried and jailed with and like adults. The juvenile judge replaced the criminal judge, the jail gave way to the detention home and probation officer, and lo! a new institution, the juvenile court.

Probation was hailed as the keystone of the new system. In the chancery courts it was founded on the ultimate power of the state to take guardianship of its children. Probation and the juvenile court became as a result practically inseparable concepts. No one thought of separating or transferring them.

When probation officers began to grapple with cases they found that every one represented the failure of one or more other social agencies to reach the child in time. Nay, they often found that the agency which should have kept the child normal simply did not exist.

Juvenile delinquency is a sort of precipitate of all such forms of maladjustment. The probation officer was forced to become a jack-of-all-trades or first-aid man. He secured for the child shoes, job, club, book, medicine, as the case demanded, in addition to supplying

the primary need of moral education. Usually he had no time or thought to go deeper than the immediate need of individuals.

Wherever a community is especially lacking or inefficient in its child-caring equipment of a certain sort, whether institutional or legal, children needing that kind of care are likely to get into trouble in large numbers. Many a court, alert to such an immediate need, has at once undertaken to meet the emergency with special funds or facilities for the purpose. Assuming the premises that probation belonged to the juvenile court, and should meet all needs of the abnormal child, the above is the logical proceeding. However, if this be granted, no line can be drawn short of a court administering all the children's charities: as a sort of "department of maladjusted children," many of whom might have been kept normal had the community shouldered the task in time. Some courts actually state this as their ideal. They are all things to all men. But the theory leads in practice to makeshifts, overlapping, and friction, and to inefficiency because of the natural limits of money, staff, time and strength.

Now it is noticeable that there is not one of the special tasks taken up by different courts working on the expansion theory but what has been successfully handled somewhere by other and purely administrative agencies, for the most part by the school. In the cities, for example, where there is adequate medical inspection in schools, we find less need of a juvenile court clinic.

Education is essentially a process of restraining, releasing and directing organic energy. Clinics, recreational and employment facilities are now recognized as legitimate parts of this process. Even the detention of children for observation and investigation is increasingly recognized as educational in its purpose. Probation, in the light of these facts is seen to be nothing but a special kind of moral education by a specialized teacher, carried on with the aid of other devices equally educational in their essence.

The question at once arises, why should a child have to be brought to court in order to receive proper educational treatment?

A conservative criminal lawyer might reply, "Because he is accused of transgressing the law, and the facts must be reviewed." But at the basis of the juvenile court, resting on the old precedents in the courts of chancery, is the theory that it is not an act which is to be punished, but a condition which demands remedy, in regard to which the court is adjudging the rights of the disputing parties. Of

this condition the child's acts are simply the evidence and the guide to proper measures for the welfare of the child, who is assumed to be legally non-responsible.

A court represents society's powers of adjudication and compulsion. Its action ordinarily implies a dispute of rights or conflict of interests; otherwise it is outside its regular field, and is really acting as an administrative agency. Only, then, where rights are contested should it be necessary to bring a child's case to court in order to get the treatment needed to keep it normal.

If this be true, much of the juvenile court's business is entirely unnecessary. In the earlier days of some courts, they were swamped with cases which were brought in, not as to a court, but as to an all-healing philanthropic institution. Blundering attempts have been made in some instances to cut down the numbers. The less abnormal children, or rather the "minor offenders," regardless of condition, were sifted out, but frequently no provision was made for their no less real needs. The flood of minor cases should have made it obvious that something was wrong with a school system which failed to supply a demand for advice and help such as the juvenile court was supposed for a time to furnish *ad libitum*.

Many courts have continued to encourage this panacea notion by their willingness to shoulder the failures and leave-overs of every other institution. Large numbers of parents voluntarily bring their children to such courts. Boys even offer themselves for advice, and the practice is hailed as a victory. Furthermore, the practice of "handling cases out of court" has spontaneously become widespread, a majority of cases being so handled in certain courts. This means, that when cases can obviously be handled by common consent, they are taken on "unofficial probation" or other services are rendered without trial.

Such work shows the great need of public but non-compulsory agencies of special education, to which wayward children may voluntarily be brought for advice or even for voluntary commitment. But unofficial probation work also obscures and handicaps the court's legitimate work, and should be forced back on other agencies where it belongs. There are enough cases which cannot as yet be so referred to other agencies, to occupy the entire attention of any existing probation force.

Assuming now for the moment that all cases capable of non-judi-

cial settlement have been eliminated from the juvenile court, we have left those legitimate cases in which there has been a refusal to follow the wishes of the administrative agencies attempting to help the child, and the rights of the parties must be reviewed in the light of the child's condition. But is there any more reason than before why a court should actually administer the educational remedy? In cases of ordinary compulsory education and of commitment to reformatory schools it is quite capable of turning over the matter of treatment to other authorities.

We must admit, then, that the first juvenile court which attached to itself the machinery of treatment, nay, even the first chancery court that undertook the care of minor wards, made, theoretically speaking, a mistake. We may fully appreciate the value of the personal work done with these methods, and the wisdom of their use as a temporary expedient, but at the same time may find the makeshift poor social economy in the long run. While there is reason in having a court pass on the exercise of the state's power of *parens patriae* when it is disputed, yet there is no obvious reason that the power should be exercised by the court itself, nor that its exercise be a compulsory act. It is already exercised by school and reformatory alike.

When the juvenile court began, probation directly replaced the jail or reform school. The leap of imagination from jail to education was too great to be bridged at once. Now, school systems have developed special detention schools, some of which admit only by court order; while prisons have become increasingly educational. But for the fact of a court record, the dividing line is no longer. This "court record," with which is associated an absolute stigma in the minds of many, is the arbitrary line remaining between what are essentially only different kinds of special education. Society has decreed that certain kinds shall have the stigma of at least nominal compulsion, while others shall not.

The logical working out of our theory demands, then, that any educational agency, whether it be house of refuge or school for normal children, be allowed to admit without trial children voluntarily offered to them, when the conditions seem to warrant it. On the other hand, agencies should not be obliged to wait in disputed cases until a child's condition is seriously abnormal before being able to call on a court to sanction their plans for its welfare. A court should have power to take cognizance of cases in which the abnormality is ever so

slight, provided the treatment is disputed. The record of compulsion by society is thus becoming a relative and no longer an absolute stigma. Already many juvenile court laws (for example those of Utah) allow jurisdiction over conditions and acts which are not recognized as transgressions by the adult laws.

This whole theory may, moreover, with equal logic be applied to the adult courts, for there are also adult reformatories, adult probation, and adult educational institutions for supposedly normal persons. We already commit insane and some inebriates without trial. Prison colonies may become increasingly educational in character and administration. We may even venture the remote possibility of a certain percentage of voluntary commitments to them, duly authorized and recorded through a proper administrative bureau, whereas ordinary disputed cases would still pass through the courts.

III

In the case of the adult court, if all matters of treatment be turned over to administrative authorities, there is still for the court its legitimate function of adjudicating the rights of legally responsible individuals. In the case of juveniles, however, the theory holds them not legally responsible. It is not the child's rights which are at stake, it is his condition which is being looked into.

If, then, a trial implies disputed rights, whose rights *are* being decided in a juvenile trial? In cases of educational treatment voluntarily agreed upon, the child has naught to say; his "rights" are not considered, it is a question of his welfare. Parental authority is sufficient when it is undisputed. When, therefore, the facts or plans in a given child's case *are* disputed, the contest is in reality between the right of the agency or institution and that of the parent, to retain custody and administer treatment. If this be so, why should any child be *tried*, or even be present at trial, except as a witness?

Here, at last, we approach the ground taken by those who advocate on grounds of expediency the fusion of domestic relations and juvenile courts. The family is increasingly becoming the unit of educational treatment or rehabilitation. Non-support and contributory delinquency laws are a recognition of this principle. The custody of children is a domestic relation, and, if disputed, its adjudication should be a trial of the parents' rights, even if the amount of

business forbids the actual combination of "juvenile" and other domestic jurisdiction under the same bench.

Thus we see that, by breaking up the function of the juvenile court into that of adjudication and that of treatment, two theories of its possible future, apparently irreconcilable, are synthesized. Together, the ideas of treatment exclusively by administrative agencies and of adjudication by a domestic relations court shear the present juvenile court of any theoretical excuse for existence. They lead to a policy of gradual contraction and self-abolition which every institution handling abnormal people might well adapt and adopt, a policy in marked contrast to the expansion theory of the juvenile court, that of the first group mentioned.

If the theory here outlined is found to work as well in the future as it bids fair to from current examples, the juvenile court will prove to have been an interesting and valuable experiment, but a passing stage to something far more thoroughgoing and effective. Instead of taking itself for granted as a necessary evil or even as a joy forever, it will find its greatest present usefulness in the interpretation of its work to the public, pointing out to other agencies their weak spots, and gradually forcing back the responsibility for child-care upon the normal institutions of home, school, and church, where it belongs. In turn, the court will continually hold up the hands of the social worker by sanctioning wise plans of family rehabilitation.